THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14547 of 1995

Dated 18-03-2006

Between:

The Depot Manager, APSRTC, Narketpally Depot.

..... PETITIONER

AND

The Presiding Officer, Labour Court-III, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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O R D E R:

The Depot Manager, APSRTC, Narketpally, is before this Court to have the award of the Labour Court-III, Hyderabad, in I.D.No.280 of 1992, dated 24-07-1993, quashed.

This Court, by order in WPMP.No.17767 of 1995, dated 12-07-1995, granted interim stay of all further proceedings except reinstatement. On a vacate stay petition being filed by the workman, this Court, by order in WVMP.No.909 of 1996, dated

15-04-1996, made the interim stay absolute on condition that the petitioner deposits half of the amount awarded by the Labour Court within a period of four weeks and that the amount shall be allowed to be withdrawn by the second respondent-workman without furnishing any security.

Facts, as stated in the award, are that the second respondent-workman was appointed as water boy at Narketpally Depot, vide proceedings dated 12-05-1980. On 01-07-1987, the petitioner herein issued an order that the services of the second respondent-workman be disengaged from 30-06-1987. Questioning the application filed by the workman, under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'), before the Labour Court, the petitioner marked Exs.M-1 to M-3 and on behalf of the workman, Exs.W-1 to W.3 were marked. The Labour Court, on the basis of the documentary evidence on record, held that the petitioner was engaged as a water boy during summer season on daily wage basis. The grievance of the second respondent-workman was that his termination was illegal and contrary to Section 25-F of the Act. The Labour court took note of the defence of the petitioner herein that the second respondent-workman was appointed for a specific period during summer season and after completion of the work, there was no necessity to retain him and therefore he was neither an employee nor a workman within the meaning of the Act.

The petitioner herein, in his counter affidavit, stated that the second respondent-workman was appointed during summer season to provide water to travelling passengers in the bus shelter during the months of April to June on daily wage basis. The Labour Court rightly held that the second respondent was a workman within the meaning of Section 2(s) of the Act and merely because he was engaged for short periods, would not render him otherwise.

Sri V.R.Balachary, learned counsel for the second respondent-workman, would contend that the Allahabad High Court and Kerala High Court held that even if a workman had not completed 240 days of service in a calendar year, even then, he can claim the benefit under Section 25-F of the Act. Learned counsel would contend that the Labour Court was justified in holding that even if the workman had not completed 240 days of service within 12 calendar months, he would be entitled for protection under Section 25-F of the Act. The Labour Court on coming to the conclusion that Section 25-F of the Act had not been complied with and on holding that the second respondent was a workman within the meaning of Section 2(s) of the

Act and entitled for protection under Section 25-F of the Act, held that his termination is illegal and while holding that the workman was wrongly terminated, directed that the workman be compensated atleast to the extent of 1/4th of the emoluments from out of the daily wages, which could have been earned if he had been in service. The award was passed setting aside the termination order dated 01-07-1987 and directing the petitioner herein to engage the second respondent-workman in the same post which he was holding before termination of his services as per the remuneration prevailing along with 1/4th of the daily wages right from the date of termination i.e 01-07-1987 till his reinstatement.

The short question which arises for consideration is as to whether a workman who has not completed 240 days of service within a period of 12 calendar months prior to the date of his termination would be entitled for protection under Section 25-F of the Act.

The Labour Court, relying on the judgments of the Allahabad High Court and Kerala High Court, held that the workman was entitled to such protection. I am afraid I cannot agree.

The Supreme Court in **General Manager, Haryana Roadways v. Rudhan Singh** held thus:

"Learned counsel for the appellant has next submitted that according to the own case of the respondent he was appointed on 16-3-1988 and his services were terminated on 28-2-1989 and thus he had not worked for one year and consequently Section 25-F of the Act would not apply to his case. In support of this submission reliance has been placed on *Sur Enamel and Stamping Works (P) Ltd.* v. *Workmen*-(AIR 1963 SC 1914) wherein it was held that under Section 25-F of the Act only a workman, who has been in continuous service for not less than one year under an employer, is entitled to its benefit. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and next that during those 12 calendar months he had worked for not less than 240 days. It was further held that a workman, who has not at all been employed for a period of 12 months, would not satisfy the requirements of Section 25-B of the Act and would not be entitled to the benefit under Section 25-F of the Act. It is important to note that Section 25-B of the Act, which contains the definition of "continuous service" was amended by Act 36 of 1964 and the relevant part thereof reads as under:

"25-B. *Definition of continuous service*.—For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(*a*) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(*i*) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(*ii*) two hundred and forty days, in any other case;

(*b*) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(*i*) ninety-five days, in the case of a workman employed below ground in a mine; and

(*ii*) one hundred and twenty days, in any other case.

Explanation.—(Omitted as not relevant for the present case.)"

This amended provision has been considered in *Surendra Kumar Verma* v. *Central Govt. Industrial Tribunal-cum-Labour Court* (AIR 1981 SC 422) where after noticing the ratio of *Sur Enamel and Stamping Works (P) Ltd.* v. *Workmen*[1] it was held as under: (SCC pp. 449-50, para 9)

"Act 36 of 1964 has drastically changed the position. Section 2(*eee*) has been repealed and Section 25-B(2) now begins with the clause 'where a workman is not in continuous service ... for a period of one year'. These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year."

In view of this authoritative pronouncement the requirements of Section 25-F of the Act would be satisfied if a workman has worked for 240 days in a period of 12 months and it is not necessary that he should have been in the service of employer for complete one year. The Industrial Tribunal-cum-Labour Court has recorded a finding that the respondent has worked for 264 days and this finding has not been challenged before the High Court. In this

view of the matter the provisions of Section 25-F of the Act are clearly applicable and as neither any notice or wages in lieu of the period of notice nor any retrenchment compensation was paid to the respondent, his termination of service has to be held to be invalid"

Thus, Section 25-F of the Act would apply only where an employee has put in a minimum of 240 days of service within a period of 12 calendar months prior to the date of his termination. It is not in dispute that the second respondent-workman was engaged only for the months of April to June each year as a water boy and that he did not complete 240 days of service within a period of 12 months prior to the date of his termination as such, the question of his being entitled for protection under Section 25-F of the Act does not arise. The award passed by the Labour Court in I.D.No.280 of 1992, dated 24-07-1993, is quashed.

Sri V.R.Balachary, learned counsel for the petitioner, would submit that pursuant to the orders of this Court refusing to stay the reinstatement, the second respondent continues to remain in the service of the Corporation till date and since he has been working for the past 12 years, it would be inappropriate to have his services terminated at this belated stage. While this submission of Sri V.R.Balachary, cannot be said to be without merit, this Court in Certiorari proceedings under Article 226 of the Constitution of India is only required to examine the validity or otherwise of the award of the Labour Court and since the award of the Labour Court is patently illegal, it is required to be set aside. It is made clear that this order shall not preclude the respondents from considering the case of the second respondent-workman sympathetically keeping in view the fact that he has been working with the petitioner-Corporation pursuant to the award of the Labour Court for the past 12 years.

The writ petition is allowed. However in the circumstances without costs.

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18-03-2006

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